

May 30, 1995

DOCKET NOS. E-002/D-93-504
E-002/D-94-635

ORDER DENYING RECONSIDERATION

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm
Tom Burton
Joel Jacobs
Marshall Johnson
Dee Knaak

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Petition of Northern States
Power for Depreciation Certification for
Expected Decommissioning Costs for the
Monticello and Prairie Island Nuclear Steam
Generating Facilities and Depreciation
Proposals for the Monticello and Prairie Island
Nuclear Plants

ISSUE DATE: May 30, 1995

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PROCEDURAL HISTORY

On January 25, 1995, the Commission issued its ORDER ACCEPTING FILING, REQUIRING ANNUAL LETTER, AND EXTENDING DATE FOR NEXT TRIENNIAL FILING in this matter. In the Order, the Commission set a number of decommissioning parameters, including the remaining lives of Northern States Power Company's (NSP's or the Company's) two nuclear units at Prairie Island. The Commission set the remaining lives for those units at 14.8 years or to 2008.

On February 14, 1995, the North American Water Office (NAWO) filed a Petition for Reconsideration, requesting that the Commission reconsider and reduce the remaining life of the Prairie Island units from the year 2009 to 2002. However, NAWO did not serve a copy of that petition on Northern States Power Company (NSP or the Company).

On February 22, 1995, NSP filed a letter with the Commission requesting that NAWO's petition be denied for failure to properly serve the Company. In the alternative, NSP requested a minimum ten day period to reply to the petition beginning from the date it would receive formal service of the petition.

On March 3, 1995, the Minnesota Department of Public Service (the Department) filed comments regarding NAWO's petition.

In its Order dated March 6, 1995, the Commission noted that absent the required service upon NSP, NAWO's petition was defective and subject to dismissal. The Commission decided, however, not to dismiss NAWO's petition on this ground as requested by NSP but to grant

NAWO a variance from the rules' service deadline requirement. The Commission found that under the circumstances dismissal appeared to be too onerous a consequence for a mistake which prejudiced no party and which NAWO was unlikely to repeat.

Accordingly, the Commission decided that it would consider the petition as if it had been duly filed and served and grant any interested party until March 6, 1995 to reply to NAWO's petition.

On March 6, 1995, NSP filed a reply to NAWO's petition and NAWO responded to NSP's reply on March 22, 1995.

On April 27, 1995, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

A. NAWO's Petition for Reconsideration

The only issue raised in **NAWO's** petition is the remaining life of the Prairie Island plant. In its March 20, 1995 Order, the Commission set remaining lives for the two Prairie Island nuclear units at 14.8 or to 2008.

In its February 14, 1995 petition for reconsideration, NAWO argued, as it had before the Commission issued its January 30 Order, that the remaining life for NSP's nuclear facilities on Prairie Island should be 2002. NAWO requested that the Commission reopen the record to review the impact of the February 1, 1995 vote by the Mescalero Apache Tribe not to accept spent nuclear fuel storage on their lands.

In its March 20, 1995 reply to NSP's March 6, 1995 Response, NAWO acknowledged that the Mescalero Apache Tribe had reversed its vote and approved the building of a temporary storage site to accept nuclear waste from NSP's Prairie Island facility, but disputed

- the extent of the progress asserted by NSP in siting an alternative facility in Goodhue County;
- the availability of temporary storage outside Minnesota since, due to other remaining obstacles, it was unknown whether the Mescalero site would be available for NSP' Prairie Island waste before the year 2002; and
- NSP's assertion that Minn. Stat. § 216B.244 (1994) did not prohibit reopening of the Prairie Island plant after shutdown.

In sum, NAWO requested that the Commission reopen for evidentiary hearings the issue of the appropriate remaining life of the Prairie Island facility on the grounds that substantial questions

of law and fact surrounding the ability of NSP to secure off-site storage were not considered by the Commission.

B. NSP's Response

NSP stated that the Commission properly found, given the known facts related to the mandates established by the Prairie Island legislation, that use of a 14.8 year remaining life for the Prairie Island nuclear units (ending 2008) was appropriate. The Company stated that in selecting the 14 year period the Commission fairly balanced ratepayer concerns and risks of premature plant shut-down.

NSP asserted that the issue before the Commission on NAWO's petition for reconsideration was whether circumstances have changed since the Commission's original Order to suggest that its findings therein are no longer accurate. The Company argued that, to the contrary, the attention paid to this issue and the actions which have been taken by the federal government, the Mescalero Apache Tribe and others suggest that, while location and exact timing are uncertain, storage will be available to meet the mandates of the Prairie Island legislation, thereby allowing for continued operation of the Prairie Island units at least until 2008.

C. The Department

The Department supported the Commission's decision to use 14.8 years in determining the decommissioning accruals for the Prairie Island nuclear units. According to the Department, the Commission properly assessed the level of uncertainty involved in the continued operation of the Prairie Island units and properly weighed that uncertainty, along with other appropriate considerations, in making its determination.

The Department stated that the relevant issue in this proceeding is whether ratemaking considerations and the existing uncertainty surrounding the Prairie Island facility warrant a further 6 year reduction (from the ordered period ending in 2008) to the period ending in 2002. The Department stated that its careful examination of the relevant ratemaking considerations and the continuing uncertainty regarding the future of Prairie Island demonstrated that NAWO had failed to substantiate the lower figure.

In support of the 14.8 year figure selected by the Commission, the Department argued that the Commission's decision, which reduces the expected life of the Prairie Island units (from 2013 and 2014 when the licenses for those units expire) to 2008 reasonably accounted for the level of uncertainty actually affecting those units. Putting the uncertainty factor into context, the Department noted that the Mescaleros have conducted another referendum (which is now known

to reverse the first vote) and approximately 10 communities have contacted NSP about the possibility of accepting nuclear waste on an interim basis. The Department stated that it is probable that the ratepayers receiving service in 2002 will continue to receive service in 2002 through 2008.

The Department noted that decommissioning involves a process of estimation. The goal is to collect adequate funds for the task while avoiding “excessive” ratepayer subsidization. Moreover, the Department implied that it is more likely that subsidization would result from adopting a shorter remaining life period because it is probable that the ratepayers receiving service in 2002 will continue to receive service in 2002 through 2008.

The Department also noted that if the decommissioning amount had to be collected by 2002, as advocated by NAWO, the decommissioning accruals for the Minnesota jurisdiction would increase by about \$10,000,000, resulting in significant rate increases for NSP’s customers. The Department noted that avoidance of such rate shock is a legitimate rate setting goal appropriately taken into consideration by the Commission, but not, apparently, by NAWO.

D. Commission Analysis

The Commission is not persuaded that it is appropriate to reopen this matter for evidentiary hearings regarding the factual and legal basis for the remaining life for NSP’s Nuclear units at Prairie Island. First, NAWO did not present arguments that convince the Commission that the figure selected (14.8 years) is unreasonable. Second, there is no indication that evidentiary hearings at this time would be able to resolve the uncertainties identified by all parties. Finally, the remaining life of the Prairie Island units, along with all issues involved in providing for the collection of decommissioning costs, will be examined in the near future, in NSP’s next decommissioning petition, due to be filed October 1996.

1. Reasonableness of the 14.8 remaining life figure

First, the Commission wishes to put the use and, hence, relative importance of the remaining life figure into perspective. The ultimate aim of the series of triennial decommissioning cost proceedings is to ensure that NSP has adequate funds available to cover the cost of decommissioning nuclear units when that decommissioning takes place and to do so in a manner that avoids excessive intergenerational subsidies and rate shock that would result from placing an excessive burden on a specific group of rate payers. The remaining life figures chosen for any three year period does not affect the amount ultimately collected from rate payers but does directly affect how much of the total decommissioning costs will be collected during the next three years. Every three years the Commission reviews NSP’s decommissioning plans and revises certain cost collection parameters as necessary to keep the Company on track toward the goals enunciated above.

While the Commission seeks a reasonable basis for each of the parameters it selects, the precision required is not absolute but is tailored to the goals to be reached: adequate funds while avoiding excessive intergenerational subsidy and rate shock. If it appears, in light of facts established during the next decommissioning proceeding, that the units are likely to close sooner (or later) than 2008, the remaining life figure will be adjusted to keep the Company aimed toward the desired financial capacity.

NAWO's attack upon the reasonableness of the 14.8 year figure is based on its prediction that NSP will be unable to meet the mandates of the Prairie Island statute and, hence, be required to shut down these units no later than 2002.¹ The basis of NAWO's prediction is its assertions 1) that community groups will prevent the location of the Company's spent fuel in Goodhue County, 2) that, despite the reversal of the vote by the Mescalero Apache Tribe, the Company will be unable to overcome legal and logistical obstacles to storing its waste in facilities constructed by the Tribe, and 3) that a combination of legal hurdles and popular opposition will prevent operation of any other out of state temporary storage site.

There is, of course, the real possibility that NSP's nuclear units at Prairie Island will be shut down in 2002. However, the Commission simply believes that the situation is too fluid today to make that possibility the basis for altering the rate at which decommissioning costs are recovered. Nothing asserted by NAWO persuades the Commission to alter that figure at this time.

2. Effect of selecting a remaining life number that is too high or too low

Whether or not a remaining life figure is based on the exact number of years that the plants will operate does not alter the amount that will be recovered from ratepayers. The amount ultimately recovered will be exactly the best estimate of what it will cost to decommission the plants. If the actual remaining life of the Prairie Island units turns out to be *lower* than the selected remaining life figure, post-shutdown ratepayers, who are no longer receiving any production benefit from production at Prairie Island, will be paying part of the cost of its decommissioning. Conversely, the pre-shutdown ratepayers would not have paid the full decommissioning costs but would be receiving assistance from post-shutdown ratepayers until the full amount of decommissioning

¹ NAWO also disputed NSP's assertion that even if the Prairie Island units were forced to shutdown in 2002 it (NSP) would be able to reopen those units at a later date when the required out-of-state storage was located, thereby extending the effective life of those units. Based on its interpretation of Minn. Stat. § 216B.244 (1994), NAWO argued that NSP's plan to reopen the facility and operate until expiration of the licenses is impossible. This point of contention between NAWO and NSP is based on assumptions which render the point too speculative at this point to warrant further attention in this Order. Moreover, a possible reopening after a possible shutdown was not a major consideration in the Commission's decision to select the 2008 remaining life date.

costs are recovered. Such intergenerational assistance, characterized as a subsidy, is what NAWO alleges a lower remaining life figure is likely to prevent.²

However, if the actual life of the plants exceeds the selected remaining life figure, the reverse condition would occur. If the selected remaining life is too low, the plants continue in operation after the expiration of the selected “remaining life”, i.e. after the total amount of decommissioning costs are collected. In such a situation, the post-full-collection ratepayers would pay nothing toward the decommissioning of the plants from which they continued to receive benefit. In this circumstance, the post-full-collection ratepayers would receive a subsidy from the pre-full-collection ratepayers.

Decreasing the Commission’s concern regarding the potential for inter-generational subsidization in this case is the relatively short period in question between the Commission’s date (2008) and NAWO’s favored date (2002). In that short period, for example, it is likely that a majority of the customers receiving service in 2002 would continue to receive service in 2008. Moreover, as mentioned previously, the remaining life figure is not set in stone. The Commission will be reviewing all aspects of NSP’s decommissioning mechanism in 1997 and can make timely adjustments at that time, if necessary, to avoid excessive subsidization.

3. Inconclusiveness of an Evidentiary Hearing at this Time

NAWO proposed that the Commission conduct an evidentiary hearing at this time on the question of when the Prairie Island units are likely to be closed. NAWO argued that such a hearing would provide a better basis for selecting a remaining life figure for the Prairie Island units.

However, it does not appear to the Commission that the unknown factors affecting the life of the Prairie Island units are capable of further clarification at this time. Given the unsettled nature of the events [e.g. whether, as NAWO alleges, NSP will encounter insurmountable difficulties in securing storage space 1) in Goodhue County, 2) on the Mescalero Apache tribal lands in New Mexico), or 3) elsewhere], an evidentiary hearing would only serve as a forum for hearing reiterated predictions from both sides. With the passage of time and unfolding of events, that picture will undoubtedly become clearer. The Commission’s next regular review of NSP’s decommissioning plans will provide a good opportunity to review the situation as it has evolved at that point.

E. Commission Action

Based on the foregoing analysis, the Commission will deny NAWO’s petition for

² At the hearing on this matter, NAWO clarified that it did not want the Commission to adopt the 2002 figure without first conducting an evidentiary hearing to determine what remaining life figure was appropriate.

reconsideration and rehearing on the remaining life issue.

ORDER

1. The Petition for Reconsideration filed by the North American Water Office (NAWO) is denied.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)